IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 12832 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DILIPKUMAR ISHWARLAL MEWADA - Applicant(s)
Versus
SURESHKUMAR SHYAMSUNDER BAGADIA & 1 - Respondent(s)

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Appearance :
MR BA SURTI for Applicant(s) : 1,
MR IH SYED for Respondent(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 15/10/2007

ORAL JUDGMENT

1. This application has been filed by the original accused praying for quashing of the criminal complaint bearing criminal case no. 1708/2001

filed by respondent no.1 herein and pending before the learned Metropolitan Magistrate, Court No.4, Ahmedabad.

2. Respondent no.1 had for dishonour of cheque initiated above mentioned complaint against the applicant after issuance of statutory notice.

3. Admittedly, to the notice issued by respondent no.1, applicant had not filed any reply. It is the case of the complainant in the said complaint, that to repay due of Rs.10,10,264/-, a cheque came to be issued by the applicant in the name of Jiki enterprise which is a proprietory concern of the complainant.

4. This application is sought to be maintained only on the ground that it is not the complainant who is proprietor of the said Jiki enterprise and that therefore, the complainant could not have lodged the complaint. My attention in this regard is drawn to the provisions contained in Section 142 of the Negotiable Instruments Act and to the decision of this Court rendered in case of **Dipendra G. Chokshi & anr. v. Kailashchandra C. Dhoot & anr.** reported in 1995(1)GLR 424 and to the decision of Punjab and Haryana High Court rendered in case of **Smt. Meeta Rai v. Gulshan Mahajan** reported in 2000(1) Bank CLR 340(P&H).

5. Having heard the learned advocates appearing for

the parties, I find that no such defence can be examined at this stage of the case.

6. In the complaint, the complainant describes that Jiki enterprise is his concern. It is not possible for this Court therefore, to go beyond the averments made by the complainant and appreciate the contentions of the applicant that it is not the complainant, but someone else who is the proprietor of the said concern. By now, it is well settled that a complaint can be quashed in exercise of powers under Section 482 of the Criminal Procedure Code when it is found that the allegations contained in the complaint even if taken on face value, do not disclose any offence.

7. The decisions relied upon by the counsel for the applicant however, are in peculiar facts of the case and lay down no absolute ratio, which can be applied in the present case.

8. With this narrow scope of inquiry of this Court, at this stage, I do not find that the entire proceedings can be quashed at the threshold.

9. In the result, application fails and is accordingly dismissed. Rule is discharged. Interim relief stands vacated.

10. Counsel for the applicant at this stage

requested that stay granted by this Court earlier may be continued for a period of eight weeks. Request is refused.

(Akil Kureshi,J.)

(raghu)